

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was **not** written for publication is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL J. LABELLE

Appeal No. 1998-0726
Application 08/434,919

ON BRIEF

Before THOMAS, BARRETT and GROSS, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 5 through 9, the rejection of claim 12 having been withdrawn at page 10 of the answer.

Representative claim 5¹ is reproduced below:

5. An underspeed warning system for a motor vehicle having left and right turn signals, comprising:

speed sensing means for outputting a speed sensing signal proportional to the speed of said motor vehicle;

means for providing a reference speed signal;

comparator means for comparing said speed sensing signal to said reference speed signal and outputting an underspeed signal when said speed sensing signal is less than said reference speed signal;

at least one warning indicator;

driver means for activating said at least one warning indicator in response to said underspeed signal; and

turn signal disable means for inhibiting said driver means from activating said at least one warning indicator when at least one of said turn signals is active.

The following reference² is relied on by the examiner:

Milde, Jr. (Milde)	4,843,370	June 27, 1989
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¹ Claim 5 as reproduced in the brief is not claim 5 on appeal, since claim 5 has been unamended. The original submitted version of this claim as filed does not include the words "it and" in the second line of the comparator means clause of claim 5 as reproduced in the brief. This has been noted by appellant at page 1 of the Reply Brief.

²The additional references cited by the examiner at page 3 of the answer have not been considered since they form no part of the actual, stated rejection of the claims on appeal.

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Claims 5 through 9 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Milde alone.

Rather than repeat the positions of the appellant and the examiner, reference is made to the briefs and the answers for the respective details thereof.

OPINION

Since no specific claim has been argued by appellant in the brief, we take as a representative claim claim 5. The focus of the dispute between the examiner and the appellant is the last clause of this claim which is "turn signal disable means for inhibiting said driver means from activating said at least one warning indicator when at least one of said turn signals is active." A similar limitation is at the end of independent claim 8.

Since we generally agree with appellant's position set forth in the brief and the reply brief, we reverse the rejection of claims 5 through 9 under 35 U.S.C. § 103.

Although we agree with the examiner's view that turn signals are well known in the art on vehicles, we do not agree

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with the conclusion that it would have been obvious to the artisan to have associated Milde's bypass or disable switch 68 in Figure 1A with the operation of the turn signal means normally found in an automobile. The most persuasive line of reasoning advanced by the examiner appears to be set forth between pages 8 and 9 of

the answer where the examiner makes reference to Milde's Summary of the Invention at column 2, lines 3-13, which indicates in part that his control device includes "means for sensing the driving environment of the motor vehicle and for changing the condition of response in dependence upon the sensed environment." This noted portion of the Summary of the Invention appears to be identical to Milde's abstract. Even considering this broad teaching of sensing the driving environment together with the statement at column 1, lines 50-53 that "it is important that the device does not switch on the hazard lights in situations where they are not needed, since frequent, unnecessary flashing of hazard lights would cause confusion to other motor vehicle operators," we are still unpersuaded of the obviousness of the subject matter of representative claim 5 and independent claim 8 as well on appeal. The examiner's reasoning as well as these teachings in Milde simply fall short in our view of a sufficient motivation, teaching, or suggestion within 35 U.S.C. § 103 of associating a turn signal means of a vehicle with the operation of the underspeed signal detector means of Milde, and to do so in a manner to inhibit the operation of the

driver means when at least one of the turn signals is active as set forth at the end of claims 5 and 8 on appeal.

We are therefore in agreement with the appellant's view expressed at pages 4 and 5 of the brief that the mere fact that Milde's prior art invention could have been modified is not sufficient within 35 U.S.C. § 103 to have found obvious the presently claimed invention since the statute requires that we conclude that it would have been obvious. Even the broad teachings noted at columns 1 and 2 of Milde would not have led the artisan to have associated the operation of the disable switch 68 to the normal operation of a turn signal in a vehicle. Thus, we agree with appellant's observation at page 7 of the brief that the examiner appears to have exercised impermissible hindsight in arriving at the position of unpatentability based upon Milde alone. The examiner's views do not appear to be prospective in nature but rather appear to be relying indirectly upon appellant's disclosed invention.

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In view of the foregoing, the decision of the examiner
rejecting claims 5 through 9 under 35 U.S.C. § 103 is
reversed.

REVERSED

	JAMES D. THOMAS)	
	Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
	LEE E. BARRETT)	APPEALS
	Administrative Patent Judge)	AND
)	
INTERFERENCES)	
)	
)	
)	
	ANITA PELLMAN GROSS)	
	Administrative Patent Judge)	

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